

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. Z-1142198
Issued to: Ted Alan SCHMIDT

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2036

Ted Alan SCHMIDT

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 137.30-1, now 5.30-1 and 3.

By order dated 28 January 1975, an Administrative Law Judge of the United States Coast Guard at Portland, Maine, revoked Appellant's seaman documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification found proved alleges that being the holder of the captioned document on or about 16 January 1969, Appellant was convicted of a violation of Chapter 94 Section 205 of the General Laws of the Commonwealth of Massachusetts in the Third District Court of Eastern Middlesex, a Court of Record, for "violation of narcotic drug law (illegal possession of marijuana)."

At the hearing, Appellant elected to act as his own counsel and entered a plea of guilty to the charge and specification.

The Investigating Officer introduced in evidence an affidavit of service and a copy of the record of Appellant's conviction.

In defense, Appellant offered in evidence statement of character reference and a statement of his personal views.

At the end of the hearing, the Judge rendered an oral decision in which he concluded that the charge and specification had been proved by plea. He then served a written order on 28 January 1975, on Appellant revoking all documents, issued to Appellant.

The entire written decision was served on 30 January 1975. Appeal was timely filed on 12 February 1975.

FINDINGS OF FACT

On 16 January 1969, Appellant, was the holder of the captioned document.

On 16 January 1969, Appellant was convicted in the Third District Court of Eastern Middlesex, a court of record, of violation of Chapter 94 Section 205 of the General Laws of the Commonwealth of Massachusetts, for violation of Narcotic Drug Law (illegal possession of marijuana).

Appellant since that time has worked ashore and at sea. His work and record since the time of his conviction have been creditable.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

- (1) Federal Regulations create an irrebuttable presumption that one convicted in a State Court of a "drug violation" is thereafter unfit to hold any mariner's papers and/or licenses for a period of ten years;
- (2) Such an irrebuttable presumption precludes this Petitioner from any meaningful hearing on the issue of t h e suspension of his mariner's license;
- (3) Said irrebuttable presumption violates the Fifth Amendment of the United States Constitution inasmuch as it violates due process;
- (4) The Federal Regulations create irrational and arbitrary distinctions between seamen convicted in State Courts for marijuana violations and those seamen found guilty by Administrative Courts for marijuana violations while aboard vessels;
- (5) Said discrimination violates the Fifth Amendment of the United States Constitution;
- (6) Since the date of Judge Mackin's decision, Petitioner has complied with General Law, Chapter 276, 100c of the Laws of the Commonwealth of Massachusetts, to wit his record has been sealed, all as more fully appears in the letter from the assistant clerk of the Third District Court of Eastern Middlesex, East Cambridge, Massachusetts dated April 16,

1975.

APPEARANCE: Horace A. Hildreth, Jr. of Richardson, Hildreth,
Tyler, & Troubh

OPINION

While administrative proceedings do not present a proper forum for constitutional challenges to duly enacted statutes, I note with respect to Appellant's first three bases for appeal that neither the statute nor the implementing regulations presume ten years of unfitness to hold a seaman's document. 46 CFR 5 clearly provides for the issuance of a new document after three years should the Commandant determine that the applicant no longer poses a threat to life and property at sea.

With respect to the fourth and fifth bases for appeal, Appellant manifests a similar confusion as to the contents of the implementing regulations. Contrary to his assertions, 46 CFR 5.03-4 and 5.03-10 merely distinguish between those found guilty of experimental use, possession or association with marijuana which the Administrative Law Judge finds will not recur and those convicted of narcotic violations. The former class involves minor offenses without conviction by a court of record and is subject only to the standard of proof set forth in 46 CFR 5.20-95(b). The latter class involves convictions by a court of record subject to proof beyond a reasonable doubt. Certainly this presents a rational basis for the classification, which serves the compelling interest of safety of life and property at sea.

Furthermore, it is noted that the class governed by 46 CFR 5.03-4 is established pursuant to 46 U.S.C. 239(g), whereas the class governed by 46 CFR 5.03-10 is established pursuant to 46 U.S.C. 239b. Thus, the classification is legislatively established and not subject to attack in administrative proceedings. (See Decision on Appeal No. 2009) as to Appellants sixth basis of appeal reference to the letter cited reveals that the record in question was sealed pursuant to the General Laws of the Commonwealth of Massachusetts Chapter 276 Section 100c. That section as amended has no application to the record of a criminal case in which the defendant has been found guilty after a plea of not guilty. I decline to address at this time the effect of that record being sealed pursuant to some other provision of state law. (See for example M.G.L.A.C 94C§34).

I have previously held that rehabilitation is not a defense

when there has been a conviction for possession of narcotics, and the Administrative Law Judge, after a finding of conviction, must enter an order of revocation. However, the evidence of rehabilitation may be considered on Appeal. (Decision on Appeal No. 1594).

CONCLUSION

I conclude that the proof of rehabilitation offered by Appellant is, in this case, of sufficient cogency and for a sufficient period of time to warrant vacating the order of revocation.

ORDER

The findings of the Administrative Law Judge on 28 January 1975, are AFFIRMED. For good cause shown, the order of the Administrative Law Judge is VACATED. No order against Appellant's merchant mariner's document exists. In any future action against Appellant's document the record, at the appropriate point, will reflect that the charge was PROVED, and that the order was ENTERED, but VACATED.

O. W. SILER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 22nd day of Sept 1975.

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